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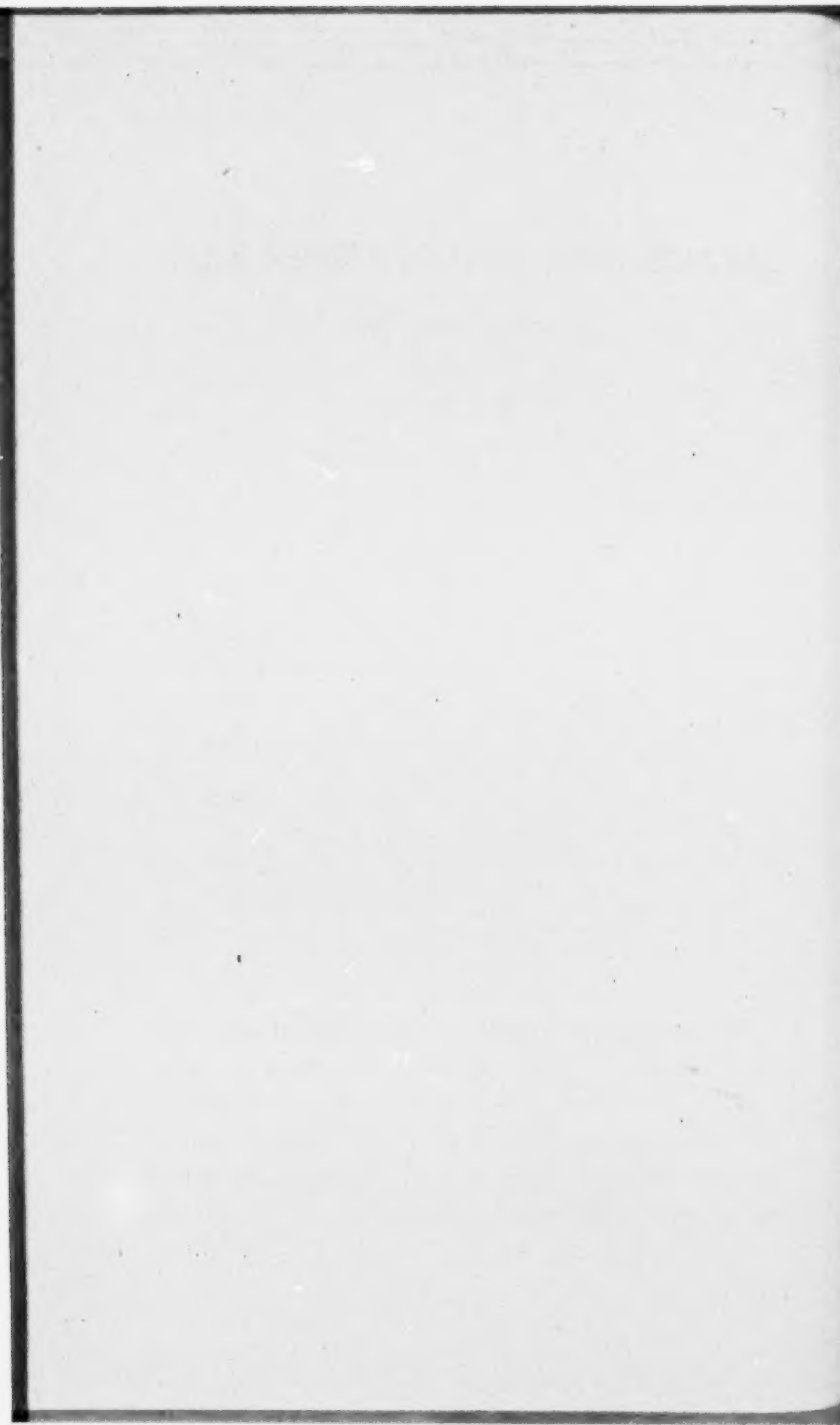
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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 501

H. S. GIBBS, COASTAL PROPERTIES, ET AL.,
PETITIONERS

v.

THE UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH
CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 42-48) is reported in 150 F. 2d 504. The district court did not write an opinion.

JURISDICTION

The judgment sought to be reviewed was entered on July 13, 1945 (R. 48). The petition for a writ of certiorari was filed on October 11, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, after the National Housing Administrator has transferred a war housing project to the jurisdiction of the Navy Department for its permanent use and the Navy through its officer in charge is in open and notorious possession, a deed subsequently executed by the Federal Public Housing Commissioner for a portion of the same project is operative to transfer title to a purchaser.

STATUTE INVOLVED

The material portion of Section 4 of the Act of January 21, 1942, 56 Stat. 11, 12; 42 U. S. C., Supp. IV, sec. 1524, provides:

Provided further, That the [Federal Works] Administrator¹ may, in his discretion, upon the request of the Secretaries of War or Navy transfer to the jurisdiction of the War or Navy Departments such housing constructed under the provisions of this Act as may be considered to be permanently useful to the Army or Navy.

STATEMENT

Through Lanham Act condemnation proceedings brought on behalf of the Federal Works Agency, the United States on September 11, 1941,

¹ By Section 4 of the Act of April 10, 1942, 56 Stat. 212, 213, 42 U. S. C., Supp. IV, sec. 1564, "Federal Works Administrator," with respect to housing, is deemed to refer to the National Housing Administrator.

acquired title to a tract of land of 415 acres for use as a defense housing project, known as Midway Park, in order to provide facilities for housing military and civilian personnel stationed at or connected with the Camp Lejeune Marine Training Base in North Carolina to which Midway Park was adjacent (R. 4, 42-43). By operation of Executive Order No. 9070, issued on February 24, 1942, which set up the National Housing Agency and consolidated the housing functions and properties of numerous other agencies therein, the Midway Park defense housing project as a Federal Works Agency property passed to the National Housing Agency (R. 43). On July 16, 1942, the National Housing Administrator, acting under the authority of the Act of January 21, 1942, *supra*, p. 2, by a letter to the Secretary of the Navy transferred the Midway Park defense housing project to the jurisdiction of the Navy Department for its permanent use, in view of the Secretary's determination that the project was considered as permanently useful to the Navy (R. 9, Exhibit A). This letter transferring jurisdiction from one federal agency to another was not recorded in the land records of the state or published in the Federal Register. However, at all times pertinent to the present controversy an officer of the Marine Corps, a service branch of the Navy, was in charge of Midway Park under the control of the commanding officer

of the Camp Lejeune Marine Training Base (R. 29, 32, 33, 34, 36, Exhibits Nos. 1, 4, 5, 6, and 9).

On May 18, 1943, about ten months after the National Housing Administrator had thus transferred the Midway Park defense housing project to the jurisdiction of the Navy Department and while a Marine Corps officer was in charge of its operation (R. 29, Exhibit No. 1, sec. 3), the Federal Public Housing Commissioner, the official in charge of one of the constituent units of the National Housing Agency, executed a deed purporting to convey to a purchaser, H. S. Gibbs, 6.16 acres of vacant land located "within" (R. 10, 11, Exhibit B) the Midway Park defense housing project, this being the acreage within the project that, according to the defense housing plans, had been reserved for commercial facilities (R. 10, Exhibit B). This deed restricted use of the land to providing such facilities (R. 13-14, Exhibit B). Gibbs in turn conveyed to H. Emmett Powell (R. 15, Exhibit C), and to Coastal Properties, Inc. (R. 16, Exhibit D). When these parties in January, 1944, sought to begin construction on this vacant acreage, the Navy forbade their bringing materials or equipment on the site and questioned the validity of their title (R. 32, 33, 34, 35, 36, Exhibits Nos. 4, 5, 6, 8 and 9).

The United States brought this action to quiet its title to the land involved, the amount of the

consideration paid for the deed being tendered into court (R. 3-8). Both sides moved for summary judgment (R. 24, 26). The district court held in favor of the United States and awarded petitioners the sum which the Government had paid into court (R. 37-39). The Circuit Court of Appeals for the Fourth Circuit affirmed (R. 42-48).

The circuit court of appeals held that when the National Housing Administrator transferred the property to the jurisdiction of the Navy for its permanent use, the National Housing Agency's "power * * * to dispose of the property ceased to exist" (R. 47-48). The Act of Congress which authorized such transfer, said the court, "Obviously * * * did not contemplate that the transferor thereafter would retain any control or power of disposition of the property. Such a retention of control or authority would be inconsistent with the permanent use of the area by the military or naval establishment" (R. 46-47). In upholding the validity of the National Housing Administrator's letter of transfer, the court said, "Congress did not require that such a transfer to the Navy should be recorded among the land records of the state or even published in the Federal Register. The failure to record or publish the transfer of jurisdiction did not invalidate it" (R. 47).

ARGUMENT

1. Petitioners do not challenge the validity of the transfer of the project to the Navy Department except to assert that the letter of transfer should have been published in the Federal Register. This assertion is groundless because, as the court below held (R. 47), Congress did not impose any such requirement, and we know of no statute requiring such publication (cf. Pet. 11). Petitioners contend that despite such transfer the Federal Public Housing Commissioner retained the power to sell the property. Plainly, Congress did not intend any such result. As the court below stated (R. 46-47), "Such a retention of control or authority would be inconsistent with the permanent use of the area by the military or naval establishment."²

Petitioners emphasize the general policy of the Lanham Act to transfer national-defense housing projects to private interests and assert that the Navy Department has no power to convey. But, as Congress recognized in amending the Lanham Act (see Act of January 21, 1942, *supra*, p. 2) certain exceptional cases would exist where it

² In explaining Section 4 of the Act of January 21, 1942, *supra*, p. 2, Senator Ellender, the sponsor of the legislation in the Senate, stated (87 Cong. Rec. 10029):

"As will be noted, the purpose of the modified amendment is to give the Administrator the right to permit the Navy Department and the War Department to obtain *title* to any defense-housing projects that can be used permanently by them. [Italics supplied.]

See also S. Rep. No. 918, 77th Cong., 1st sess., p. 4.

would be desirable for the interests of the Government to retain the project permanently for use of the Army and Navy rather than dispose of it to private enterprise. Such is this case. The power of sale is irrelevant concerning land which is to be used permanently by the Navy.

Petitioners' contention that many titles are or may be involved lacks merit. This case relates only to those instances where a project is transferred to the Army and Navy for their permanent use. We know of no similar instance where the Housing authorities have attempted to convey property already transferred. It cannot be assumed that such a mistake, which was made in 1943 under the pressure of the war emergency, will be repeated.

2. Petitioners' assertion that the sale resulted from a request by the Navy Department likewise ignores the fact that rather than being disposed of by sale, this property is to be permanently retained by the Navy. Moreover, the assertion is contrary to fact. The idea of a sale was not, as petitioners assert, initiated by the Marine Commandant (Pet. 4, 11). Rather, it was Mr. Montague, a National Housing Agency representative, who "advised" the procedure (R. 29) and the commanding officer made the request "in line with Mr. Montague's suggestion." Moreover, this request does not mention any proposed sale of the property but simply requests expedition of erection of commercial facilities. This was in accord with the

Congressional policy of cooperation between the Housing authorities and the Navy and War Departments. See Act of June 28, 1940, 54 Stat. 681, secs. 201-203, 205, 42 U. S. C., secs. 1501-1503, 1505. Thereafter, further proceedings were all taken by the National Housing Agency representatives and there is nothing to indicate either knowledge or agreement on the part of any Navy Department official in the sale to petitioners. On the contrary, as soon as petitioners sought to begin construction operations on this tract, the Navy promptly ordered the cessation of such activities (R. 32-35).

Even if it be assumed that the local Marine Commandant initiated the sale, any further presumption that such action was authorized by the Secretary of the Navy (cf. Pet. 4) is contradicted by the fact that the Secretary determined that this property was permanently useful to the Navy (R. 9) and that the Navy Department directed the cessation of building operations as soon as they were commenced upon the property (R. 33).

3. Petitioners do not seriously attempt (cf. Pet. 5, 12) to demonstrate any error in the holding of the circuit court of appeals that the provision of the Lanham Act providing that proceedings for the recovery of possession of housing projects shall be brought in state courts is inapplicable here (R. 45-46). Moreover, the fact is that the Navy Department was already in possession. The Midway Park project embraced some 415

acres, of which the 6.16 acres here involved were a part (R. 42). It was this entire area that was transferred to the Navy Department (R. 9). And the housing project was an integral part of the New River Marine Corps Training project. *John L. Roper Lumber Company v. United States*, 150 F. 2d, 329 (C. C. A. 4).³ The correspondence in 1943 and 1944 also shows that this property was a part of the Marine base under control of the Marine officers and was not, as petitioners assert (Pet. 11), an "off base" site (R. 29-30, 32-37).

CONCLUSION

The decision below is correct. There is neither a conflict of decisions nor a question of general importance. It is therefore respectfully submitted that the petition should be denied.

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NOVEMBER 1945.

³ This case which was submitted to the circuit court of appeals on the same day as the instant case was an appeal by one of the former owners from a judgment determining the compensation to be paid upon the condemnation of land for Midway Park. The court there affirmed a jury's finding that the housing project was a part of the larger Marine base project within the meaning of the doctrine of *United States v. Miller*, 317 U. S. 369, 376-377, 379.